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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,111	12/01/2003	Werner Breymaier	W&B-ES-2056	3339
24131	7590	07/28/2005	EXAMINER	
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			DOOLEY, JAMES C	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/725,111	Applicant(s) BREYMAIER ET AL.	
	Examiner James C. Dooley	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 4 and 6 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 5, 7 and 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/17/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Regarding claims 1-8, the phrase "can be" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). It is unclear from the claim language if the claimed structure includes a hanging and support element together.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1,6 are rejected under 35 U.S.C. 102(b) as being anticipated by Rieman (US patent number 5,110,080). Rieman teaches a support element with an upward projecting suspension rail and a hanging rail with slots made to be plugged onto the suspension rail. It can be seen in figure 1 of Rieman that the curvature of the slots matches the curvature of the suspension rail. With regards to the functional language "can be plugged...", the recitations are given no patentable weight. It is noted, "an apparatus must be distinguished from the prior art in terms of structure rather than

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function.” (In re Schreiber, 128 F.3d 1473,1477-78, 44 USPQ2d 1429, 1431-32; Fed. Cir. 1997).

Rieman also teaches a “U” shaped hanging rail with cutouts formed for receiving rack elements. (col. 2 ln. 54-55)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2,4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rieman. Rieman teaches a wall mountable rack using a horizontal suspension rail and a vertical hanging rail. Rieman does not disclose methods in which these rails are produced. It can be understood from the language in the disclosure of Rieman that sheet metal forming was implied, e.g. “holding edge bent obliquely upwardly” (col. 1 ln 12-13). It can also be seen from the design of Rieman that the suspension rail is configured in a radial direction out from the support element. The “holding edge”(2) protrudes from the “rear face” (1) at a rounded interface. In view of the design it would be obvious to one with ordinary skill in the art to manufacture this product using the well-known methods of sheet metal forming. The radial edge seen in the design of Rieman is seen as inherent to the sheet metal bending process.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Riemen in view of Cheng (US patent number 46781520). Riemen teaches a wall mountable rack using a horizontal suspension rail and a vertical hanging rail. Riemen does not show a variation of the hanging rail including an oblique upper corner for the purpose of rotating the hanging rail onto the suspension rail. Cheng discloses a rack structure featuring a method of rotatably plugging the hanging elements into the support elements featuring an oblique surface on the hanging elements to facilitate the rotatable movement (col. 7 ln. 53-56, also secondary example in fig. 12). In view of the prior art it would be obvious to one with ordinary skill in the art to modify the design of Riemen to include the features of Cheng. The motivation would be to ensure a more stable fixture without the need of additional hardware.

Allowable Subject Matter

6. Claims 3,7,8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remmers (US patent number 6,669,154). Remmers teaches a suspension rail and hanging rail in which the hanging rail is rotated onto the suspension rail (col. 3 ln. 61-65). Remmers uses this method with the motivation that the hanging rail will not disengage from the suspension rail if the rack is pushed upward (col. 3 ln. 15-18).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Dooley whose telephone number is 571-2721679. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Richard Chilcot
Supervisory Patent Examiner
Technology Center 22
